IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 30TH JANUARY 2007 / 10TH MAGHA 1928

Crl.Rev.Pet.No. 60 of 2007()

CRA.605/2004 of ADDL. SESSIONS COURT (ADHOC), THRISSUR
ST.872/2002 of CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR

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REVN. PETITIONER - APPELLANT - ACCUSED:

FATHER A.P. THOMAS ADATTUKUDIYIL,
ADATTUKUDYIL HOUSE, VATTULLY,
KURUMAL P.O., KURUMALA VILLAGE,
THALAPPILLY TALUK, THRISSUR DISTRICT.

BY ADV. SRI.C.B.SREEKUMAR

RESPONDENTS - RESPONDENTS - COMPLAINANT & STATES:

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1. A.L.. JOSEPH, S/O. LOOVIS, ARANGASSERY HOUSE,
PUTHISSERY DESOM P.O.,
PURANATTUKARA P.O.,
THRISSUR TALUK.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

BY ADV. SRI.P.VIJAYA BHANU
SRI.P.M.RAFIQ
BY PUBLIC PROSECUTOR SHRI C.M. KAMMAPPU

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 30/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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CRL. R.P. NO. 60 OF 2007

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Dated this the 30th day of January, 2007

O R D E R

Heard counsel for petitioner and Public Prosecutor. In view of the order which I propose to pass in this Criminal Revision Petition, it is not necessary to issue notice to first respondent-complainant.

2. Revision petitioner is stated to be a person having some connection with an aided School, namely, M.M.U.P. School at Korachira, Palakkad. First respondent filed the complaint alleging that petitioner promised to get an appointment for his wife as a Hindi Teacher in M.M.U.P. School on condition that first respondent pays Rs.2,70,000/- to petitioner. Accordingly, first respondent paid an amount of Rs.2,70,000/- to revision petitioner. But petitioner failed to get the appointment order as promised. So he was asked to repay the money. Revision petitioner issued Exhibits P1 and P2 cheques. When the cheques were presented for payment, the same were dishonoured for want of sufficient funds in the account maintained by the revision

petitioner with Bank. First respondent issued a notice demanding repayment of the amount given. But the petitioner did not repay. Hence the complaint.

3. When the petitioner appeared before the Chief Judicial Magistrate, copies of the relevant documents were furnished to him. On the side of complainant P.Ws.1 to 3 were examined and Exhibits P1 to P10 proved and marked. After complainant's evidence was over, petitioner was questioned under Section 313 of the Criminal Procedure Code. He denied all the incriminating circumstances brought against him. But no defence evidence was adduced. Learned Magistrate found the petitioner guilty of the offence alleged, convicted and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.3,00,000/- and in default of payment of fine to undergo simple imprisonment for three months. It was also ordered that if fine amount is realised, it will be given to P.W.1 as compensation. Challenging the said conviction and sentence, petitioner filed Crl. Appeal No.605 of 2004 before the Sessions Court, Thrissur. Learned Sessions Judge concurred with the findings of the Magistrate and

dismissed the appeal. Challenging those conviction and sentence this Criminal Revision Petition is filed.

4. P.W.1 is the complainant. He gave evidence to the effect that revision petitioner received an amount of Rs.2,70,000/- assuring that his wife will be appointed in the post of Hindi Teacher in M.M.U.P. School at Korachira, Palakkad. His evidence also shows that revision petitioner handed over Exhibit P10 appointment order which turned to be a fabricated one. It was also come out in evidence that revision petitioner had no connection with the School in question. He promised to repay the amount and issued Exhibits P1 and P2 cheques in discharge of that debt. The evidence also shows that when Exhibits P1 and P2 cheques were presented for payment, the same were dishonoured and returned for want of sufficient funds in the account maintained by the petitioner with the Bank. Notice was issued. The complaint was filed after observing all formalities.

5. Evidence tendered by the complainant is corroborated by the evidence of P.Ws.2 and 3. Both the courts believed their evidence and found that petitioner issued Exhibits P1 and P2

cheques in discharge of a legally recoverable debt and when the cheques were presented, the same were dishonoured for want of sufficient funds in the account of the revision petitioner with the Bank. That is a finding of fact based on evidence. So the finding that the petitioner is guilty of the offence punishable under Section 138 of the Negotiable Instruments Act is perfectly correct and does not call for any interference.

6. Learned counsel for the petitioner submitted that the sentence imposed is very harsh. Considering the facts and circumstances of the case, I am of the view that the substantive sentence imposed can be reduced to imprisonment till rising of the court. But I do not find any reason to interfere with the fine imposed by the court below. In the result, Criminal Revision Petition is disposed of in the following manner:

The finding of the courts below that the revision petitioner is guilty of the offence punishable under Section 138 of the Negotiable Instruments Act is confirmed. Conviction is also confirmed. But the sentence imposed is modified. The substantive sentence imposed is reduced as imprisonment till

rising of the court. Petitioner is directed to pay a sum of Rs.3,00,000/- to the first respondent. Petitioner is granted two weeks from today to appear before the Magistrate and receive the substantive sentence and also to pay the fine amount. If payment is made by the petitioner, that amount shall be paid to P.W.1 as compensation. If the petitioner fails to comply with the directions, learned Magistrate can execute the sentence as ordered after the expiry of the period of two weeks.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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CRL. R.P. NO.

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O R D E R

4TH JANUARY, 2007